

DECISION OF THE UMPIRE

APPLICATION FOR REVIEW OF CONTRACTOR'S
INTENDED WORK ASSIGNMENT

JOFFRE 2000 PROJECT (NOVA CHEMICALS)

CONTRACTOR: SPANTEC CONSTRUCTORS LTD.

J.A-Plan 9906. April 30, 1999

Disputing Trades

Intentional Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers,
Lodge 146, Edmonton.

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local
720, Edmonton.

Review of Intended Work Assignment -

Intake Air Filter House, Duct and Expansion Joints, Dampers.

Joffre 2000 Project (-Nova Chemicals), Spantec Constructors Ltd.

Description of the Work

The description of the work and the reasons for the intended work assignment were provided by Spantec in a letter to the J A Plan Administrator dated April 21, 1999.

"The work in dispute is the assembly and erection of the Air Intake Filter houses and Ducting for the cleaning of combustion air for the Combustion Turbines (jet engines) at the Joffre 450-megawatt Co-Generation project at Nova Chemical's plant at Joffre Alberta."

The letter goes on to describe the workings of the plant and to point out that the air intake filters do not supply air for the steam generator. Waste heat from the exhaust is channeled through the Heat Recovery Steam Generator. The Intake Air Filter House is simply to provide clean combustion air to a mechanical piece of equipment.

Spantec notes that the Ironworkers enjoy 14 awards by 11 Contractors in Canada and the

Boilermakers have 8 awards by 4 Contractors in Canada. A list of awards in favour of each trade was included by Spantec. They conclude, "Based on these findings and evidence we reaffirm the awards as stated in our letter of March 4, 1999.

Nature of the Protest

The intended assignment by Spantec Constructors Ltd. of the installation of the intake air filter house, inlet air duct, expansion joints, dampers and the power rigging of the filters.

The Boilermakers argue that the Ironworkers have no claim to the work as evidenced in the Agreements of Record and in the applicable agreements between the crafts involved. "This leaves the Iron Worker no alternative but to make his claim under the prevailing practice provisions."

The Boilermakers request a decision of the Umpire based on the Agreements between the two Crafts.

Authority

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the request and documentation submitted by the Boilermakers and the response submitted by the Ironworkers.

EVIDENCE

Boilermakers Submission

A general arrangement drawing is provided and explained. This purports to show that the filter house is an integral part of the inlet air- duct system. it is certainly an element in the system but

not integral. I read the drawing as showing the inlet air to be ducted within the filter house. The expansion joints are an integral part of the air inlet duct system.

There is exhaust duct work which has been assigned to the Boilermakers. They claim that the expansion joints contained therein should also be assigned to them, because they are an integral part of the exhaust duct system.

Next the letters of assignment issued by Spantec dated March 4, 1999 and March 31, 1999 are noted, and the Umpire's attention is drawn to the phrase that the Contractor considered the evidence presented". The Boilermakers say that it appears the basis for

making this assignment was prevailing practice only, with no consideration being given to the Agreements existing between the two Crafts. These agreements were in the possession of the Contractor at the time of the assignment. The Boilermakers go on to point out that the Umpire is obligated to give precedence to an Agreement of Record or applicable agreement between the Crafts before considering prevailing practice.

The Agreement of Record between the Crafts which is referred to above, is dated May

28, 1926 and is in the Green Book. Section I says that ... *connections between the boiler and the stack ... uptakes, smoke boxes, air and water heaters, smoke consumers, hot cold air duct (except when used for ventilating purposes)* is the work of the Boilermakers. The underlined wording is applicable to the work in dispute according to the Boilermakers. It might also be pointed out that this clause makes reference to the *construction, erection and assembling of all boilers, parts and work in connection therewith*. The clause then goes on to describe the various parts.

The Boilermakers point out that in Section 3 of the same agreement, it says that *...tanks or containers requiring tight joints including riveted, caulked or welded construction ...* is the work of the Boilermakers. As the work in dispute is a sealed system requiring tight joint construction, it follows that the work belongs to the Boilermakers.

The next piece of evidence is the Understanding between the Ironworkers and the Boilermakers dated April 10, 1973. It specifically refers to Gas Turbines and says, *Boilermakers will handle and install intake and exhaust ducts, as well as all stacks*. This understanding appears to have particular relevance. Several decisions in favour of the Boilermakers from International Boards of Jurisdiction, and one under the Canadian Plan are presented for the Umpire's consideration.

Next, an agreement dated February 8, 1972 awarding inlet air dampers (non-pressurized Bag Houses) in accordance with the Boilermaker - Millwright agreement.

Other evidence includes pointing out the similarity between a dust collector and the filter house in question, a reference to the Green Book regarding Precipitators, minutes of a joint committee meeting regarding the installation of a dust collector and minutes of a joint committee meeting awarding a turbine cooling duct. All work awarded to the Boilermakers.

Ironworker Submission

The ironworkers point out that the parties met on March 17, 1999 to review the Contractor's intended assignment. Submissions were received at that time, but a review of the submissions by

the Contractor resulted in confirmation of his original assignment. The parties were informed of this on March 31, 1999.

The Ironworkers support the intended assignment by Spantec, and as there are no governing agreements between the Crafts regarding this review request, the contractor assignments should carry significant weight.

The Ironworkers refer to the May 1, 1971 agreement between the Millwrights and the Ironworkers which deals with machinery and / or equipment in heavy industrial plants. In this agreement the unloading and transporting of machinery / equipment is the work of the Ironworkers or Ironworkers and Millwrights depending on the stage of the work. Rigging is to be done by a composite crew and final installation is by the Millwrights. Other rigging that occurs before final installation's the work of Ironworkers.

The main emphasis of the Ironworkers submission is on Contractor assignments of mechanical equipment including filter houses, filters and ducting; all associated with turbine installation. Some 26 projects are mentioned in various jurisdictions. Some projects assign the off-loading and placing of equipment to the Ironworkers alone. Others that involve assembly and installation mention the Millwrights.

The Ironworkers submission concludes with three illustrative drawings.

Summary

Both the Ironworkers and the Millwrights have completed numerous projects of a similar nature to the work in dispute. The contractor however has chosen the Ironworkers and Millwrights to do most of the work.

As mentioned previously, the Air Intake Filter House is not an integral part of the inlet air duct system. The expansion joints in the exhaust duct system however must be considered integral, and the question arises as to why this work was not assigned to the Boilermakers?

The claim that the contractor only considered prevailing practice when making his assignment is understandable. The Contractor made no reference to the Agreements which exist between the two trades. Whether these were ignored or considered not applicable, is not evident. I agree with the Boilermakers that an Agreement of Record enjoys primary position when determining how an assignment should be made, however the Agreement of Record must be **applicable** to the work in dispute. I do not consider the Agreement of Record dated May 28, 1926 to be applicable. Section 1 has to do with boilers, and to infer that because it mentions hot and cold air ducts the Boilermakers should be assigned the work in dispute, is stretching the time of reference of the agreement. Section 3 likewise. It refers to tight joints in tanks and containers, but it does not follow that all equipment requiring tight joints is the work of the Boilermakers.

The Understanding between the Ironworkers and the Boilermakers dated April 10, 1973 is a different matter. This letter is signed by the two Presidents and deals directly with part of the work in dispute, i.e. intake ducts for gas turbines. I consider this to be an applicable agreement as referred to in Article VI (i) of the J A Plan Procedural Rules. The decision by arbitrator W.E.(John) Hart dated March 10, 1994 in favour of the Boilermakers, is also significant. It deals with *the installation of a plenum (including ducting and stack at a pipeline compressor station, a*

type of project referred to frequently by the Ironworkers as being applicable to this work. The problem with the understanding is that it ignores the Millwrights in the installation and alignment of the equipment - traditional Millwright work.

The Ironworkers also refer to an agreement between themselves and the Millwrights, and draw Article #3 of this agreement dated May 1, 1971 to the Umpire's attention. Much of the work in respect to the turbine and ducting on this project falls naturally to the Ironworkers, i.e. unloading and transporting of machinery and equipment and rigging; or to the Millwright, i.e. rigging, installation and alignment. But the Boilermaker is ignored.

The Ironworkers / Millwrights enjoy the preponderance of assignments of the work in dispute.

It is interesting that the contractor in his assignment managed to give some work to each of the trades making submissions.

Ruling

The intake air duct and the exhaust air duct with expansion joints shall be assigned to the Boilermakers. The balance of the work shall remain as originally assigned.

G.R.Beatson, Umpire

J A Plan / Alberta Construction Industry